IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO: 17201 of 2004

Between:

S.Azhar Ahsan, s/o late S.Akhtar,
r/o 8-2-282/A/A, Road No.3, Banjara Hills, Hyderabad.

... PETITIONER

AND

1 The Municipal Corporation of Hyderabad represented by its

Commissioner, Tank Bund Road, Hyderabad.
2 The District Collector, Hyderabad District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, one more particularly in the nature of a writ of 'mandamus' declaring the action of the 1st respondent in not receiving or considering the application of the petitioners seeking building permission for house bearing No.8-2-282/A/A, Road No.3, Banjara Hills, Hyderabad by insisting on the production of a 'no objection certificate' from the District Collector, Hyderabad as being illegal, arbitrary, unconstitutional and contrary to law declared by this Hon'ble Court and consequently direct the 1st respondent to receive consider and process the petitioners application for construction in the said plot without insisting on a no objection certificate from the 2nd respondent and issue sanction for the construction of the building in the said premises.

Counsel for the Petitioner: MR.S.NIRANJAN REDDY

Counsel for the Respondents: GP FOR REVENUE

The Court made the following:

ORDER:

Heard the learned counsel for the petitioner and also the learned standing counsel appearing on behalf of the respondents.

2. Both the counsel have no objection to dispose of the writ petition at the stage of admission in the light of the order passed by this Court in ***HYDERABAD POTTERIES PRIVATE LIMITED v. DISTRICT COLLECTOR, HYDERABAD*** wherein it was held as under:

> "The Commissioner is required to make pragmatic assessment of the material available on record and decide the question of prima facie title and lawful possession of the applicants. The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objection(s) whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted and dispute the title in any manner known to law. Similarly, the Commissioner is not entitled to decide any dispute questions of title or the ownership. All that the Commissioner required to do is to find out prima facie title and lawful possession of the applicant and obviously such consideration is confined to only for the purpose of granting permission and nothing more."

3. On appeal filed by the District Collector, a Division Bench of this Court in Writ Appeal.No.1096 of 2001 held that Commissioner, while acting under Section 429 (1) (a) of the Hyderabad Municipal Corporation Act, read with relevant building byelaws etc., acts as a statutory authority and required to make decision on relevant materials and facts. It is not legally permissible for such authority to base its decisions only on one piece of relevant material and to exclude other relevant material. Holding so, refused to interfere with the order of the learned Single Judge.

The Writ Petition is accordingly disposed of to consider the application of the petitioner in the light of the above decisions and pass appropriate orders. No costs.

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A. **GOPAL REDDY, J**

September 24, 2004

MRR

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

TO:

1 The Municipal Corporation of Hyderabad represented by its

Commissioner, Tank Bund Road, Hyderabad.
2 The District Collector, Hyderabad District.

3 Two C.C.s to the G.P. for Revenue, High Court Buildings, Hyderabad (OUT).

4. Two C.D. Copies.

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